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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,333	04/22/2005	Thomas Lich	10191/3768	9141
26646 7590 10/17/2008 KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004			EXAMINER GOODEN JR, BARRY J	
			ART UNIT 3616	PAPER NUMBER
			MAIL DATE 10/17/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/532,333

**Applicant(s)**

LICH, THOMAS

**Examiner**

BARRY J. GOODEN JR

**Art Unit**

3616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This office action is in response to the amendment filed June 9, 2008. Currently, claims 10-23 are pending. Claim 16 is amended. Claims 19-23 are new.

#### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 10 -23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In the instant case, claim 10 recites "measures **only** in a substantially vertical direction" however, the specification does not provide support for the claim terminology.

#### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3616

4. Claims 10-13 and 16 are rejected under 35 U.S.C. 102(B) as being anticipated by Andre et al., DE 19822184.

In regards to claims 10-13 and 16, Andre et al. discloses all of the claimed elements including a device for detecting an obstacle underride, comprising:

at least one vertical distance measuring device (2) situated on a vehicle front in such a way as to detect an obstacle underride, wherein the vertical distance measuring device measures in a substantially vertical direction (Reference is made to Figures 1 and 2) away from a vehicle underside (Reference is made to Figure 2);

wherein the vertical distance measuring device includes at least one transceiver;

wherein the at least one transceiver includes one of an ultrasonic sensor or a radar sensor;

wherein the vertical distance measuring device includes at least one video sensor; and,

wherein the device is connectable to a control unit for a restraining arrangement in such a way that the control unit triggers the restraining arrangement as a function of a signal of the device (Reference is made to Figure 2 and the Abstract).

#### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said

Art Unit: 3616

subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 14, 15, and 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andre et al.

In regards to claims 14 and 18, Andre et al. discloses all of the claimed elements excluding the vertical distance measuring device explicitly located on a bumper or the vertical distance measuring device being situated on the rear bumper.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have located the vertical distance measuring device on the front or rear bumper, since it has been held that rearranging parts of an invention involves only routine skill in the art.

In regards to claim 15, Andre et al. discloses all of the claimed elements excluding the at least one device comprising four vertical distance measuring devices.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided four vertical distance measuring devices as claimed, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

Applicant has not refuted that rearranging parts or duplicating parts is within the skill of those in the art and as such it is being taken as an admission of prior art.

7. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Andre et al. in view of Cho, US Patent 6,408,237.

In regards to claim 17, Andre et al. discloses all of the claimed elements excluding the device configured for the purpose of sensing pedestrians.

Cho discloses a system utilizing EM radiation (radar) or ultrasonic device wherein the device is configured for the purpose of sensing pedestrians.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Andre et al. in view of the teachings of Cho to include the device configured for the purpose of sensing pedestrians so as to prevent damage to pedestrians during collision thereby increasing safety.

Applicant has not refuted that configuring a device for the purpose of sensing pedestrians as taught by Cho is within the skill of those in the art and as such it is being taken as an admission of prior art.

Examiner notes with respect to claim 10, the recitation that the device situated on a vehicle front "in such a way to detect", does not serve to distinguish because it is a functional recitation. Furthermore it has been held that performing a function is not a positive limitation but only requires the ability to so perform. Examiner suggests replacing with a positive structural recitation.

Examiner notes with respect to claim 17, the recitation wherein the device "is configured for the purpose of sensing pedestrians", does not serve to distinguish because it is a functional recitation. Furthermore it has been held that performing a

Art Unit: 3616

function is not a positive limitation but only requires the ability to so perform. Examiner suggests replacing with a positive structural recitation.

### ***Response to Arguments***

8. Applicant's arguments filed June 9, 2008 have been fully considered but they are not persuasive.

Examiner maintains the previous rejection is proper.

In response to the applicant's arguments concerning "measures only in a substantially vertical direction" the claim terminology and the specification are not commensurate in scope, i.e. alignment does not equate to the range of measurement. As such, there is no support found for the claimed terminology. Examiner maintains the 112, 1st rejection is proper.

In response to the applicant's arguments concerning the art rejections, the arguments rely on terminology not supported by the specification and rejected under 112, 1st, since the examiner has shown the 112, 1st rejection to be proper the applicant's arguments are moot and not commensurate with the scope of the invention. Examiner maintains the previous art rejection is proper.

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BARRY J. GOODEN JR whose telephone number is (571)272-5135. The examiner can normally be reached on Monday-Friday 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Q. Nguyen can be reached on (571) 272-6952. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Art Unit: 3616

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Barry J Gooden Jr.  
Examiner  
Art Unit 3616

BJG

/Faye M. Fleming/  
Primary Examiner, Art Unit 3616